

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

<p>SOURCE GIANT SPRINGS, INC.; and DAVID BROWN, as Stockholders’ Representative,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">-vs-</p> <p>GREENBERG INVESTMENT, LLC,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">No. CV-20-73-GF-BMM</p> <p style="text-align: center;">FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER</p>
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Plaintiffs Source Giant Springs, Inc., and David Brown, as stockholders’ representative (collectively, “Plaintiffs”), filed a Motion for Entry of Default Judgment on December 21, 2020. (Doc. 6). This Court held a hearing on Plaintiffs’ Motion on January 6, 2021. The Court enters the following Findings of Fact, Conclusions of Law and Order based on the record and evidence presented at the hearing.

FINDINGS OF FACT

1. Source Giant Springs, Inc., (“Source Giant Springs”) a Montana business, draws water through a pipeline from Giant Springs just east of Great Falls to its bottling plant, bottles that water, and then sells the bottled water to third parties. David Brown (“Brown”) has acted as CEO of Source Giant Springs

for over thirty years.

2. Source Giant Springs bears over 100 other shareholders, located both in and outside of Montana.

3. In late 2018, Martin Greenberg (“Greenberg”), a Milwaukee attorney, contacted Brown and expressed interest in buying Source Giant Springs. Greenberg proposed buying the company for \$15 million. Greenberg further proposed that the sale occur as a stock purchase agreement, requiring all of the company’s shareholders to sell their entire stock.

4. Brown thought Greenberg’s \$15 million offer reflected a higher value than Source Giant Springs’s actual worth, so Brown chose against quibbling about the offer price. Brown understood from discussions with Greenberg and John Rose (“Rose”), a California businessman and Greenberg acquaintance, that Greenberg expected to recoup any losses from purchase of Source Giant Springs with an alternative investment in a larger bottling plant.

5. Gary Bjelland (“Bjelland”), a Great Falls attorney who handled the transaction for Source Giant Springs, testified that Greenberg executed a letter of intent and then prepared the first draft of what became the Stock Purchase Agreement (Doc. 1-1). Greenberg signed the Stock Purchase Agreement for his company, Defendant Greenberg Investment, LLC, (“Greenberg Investment”) on March 1, 2019.

6. Paragraph 10.1(a) of the Stock Purchase Agreement recites that

the parties agree to this Court's jurisdiction. (Doc. 1-1 at 16).

7. Brown obtained the consent of all of the shareholders of Source Giant Springs prior to the transaction.

8. The sale was supposed to close in June 2019 but did not.

9. In June 2019, the parties executed an Addendum to the Stock Purchase Agreement (Doc. 1-2), which called for the transaction to close on June 19, 2019. Although the original Stock Purchase Agreement described the purchase price to be paid as \$8.5 million down, with two follow-up payments of \$3.25 million each, the Addendum called for Greenberg Investment to also provide an irrevocable standby letter of credit to secure the \$6.5 million unpaid balance.

10. The transaction did not close in June 2019, for reasons never explained to either Brown or Bjelland.

11. Later in 2019, Brown learned of a concern regarding the water rights of Source Giant Springs, one of which was set to expire in 2020. Brown accordingly obtained extensions to the year 2025 from the Montana Department of Natural Resources and Conservation, giving the company more time to perfect its provisional water rights. An Amendment to Stock Purchase Agreement, dated December 31, 2019, required Brown to obtain this extension. (Doc. 1-3). Despite Brown's compliance with this provision, the transaction remained unclosed.

12. In February 2020, the parties executed a Second Amendment to Stock

Purchase Agreement calling for the transaction to close on February 20, 2020.

(Doc. 1-4 at 1). The closure date came and went without finalization. The Second Amendment to Stock Purchase Agreement also specifically required Greenberg Investment to send a draft of the irrevocable standby letter of credit to Bjelland prior to closing, a requirement that Greenberg never fulfilled. *Id.*

13. Bjelland testified that Greenberg told him that Source Giant Springs has fully performed its obligations under the Stock Purchase Agreement. According to Bjelland, Greenberg or Rose gave various reasons why the transaction could not be closed. Bjelland further testified to the simplicity and appropriateness of wiring the \$8.5 million to an account in Great Falls, and the mailing or sending by overnight courier an irrevocable standby letter of credit. Bjelland testified that he was told that the purchasers needed to fly to Jackson Hole, Wyoming, to stop at a bank there and would then continue on to Great Falls to close the transaction in person. Despite Bjelland receiving multiple different dates for that flight's occurrence, the purchasers never arrived.

14. In December 2020, Greenberg told Bjelland that the transaction would close on December 17, 2020. It did not. Greenberg has never provided Bjelland with an explanation as to why the December 17, 2020 closing failed to occur.

15. Brown testified that he believes that Source Giant Springs can now be sold to a third party for \$6.5 million.

CONCLUSIONS OF LAW

1. Defendant has breached the Stock Purchase Agreement, as that Agreement has been amended and extended. Plaintiffs have fully performed their obligations under the Agreement.

2. Plaintiffs have sued for specific performance of the Stock Purchase Agreement or, alternatively, for damages for breach of contract.

3. Plaintiffs stand entitled to specific performance of the Stock Purchase Agreement. *See Boyne USA, Inc. v. Spanish Peaks Dev., LLC*, 292 P.3d 432 (Mont. 2013).

4. If Defendant fails to specifically perform its obligations under the Stock Purchase Agreement within the time fixed by this court, Defendant shall have conclusively breached the Stock Purchase Agreement. Defendant's conclusive breach of the Agreement will result in Plaintiffs' entitlement to damages. Contract damages seek to place a party in the position in which they would have been had the other party not breached the contract. *First Nat'l Props., LLC v. Joel D. Hillstead Tr.*, 472 P.3d 134, 141 (Mont. 2020). The difference between the value of Plaintiffs' entire shares if sold to a different buyer (\$6.5 million), and the amount at which Defendant agreed to purchase Source Giant Springs (\$15 million), results in \$8.5 million as the proper measure of damages in this case.

5. Defendant shall have thirty (30) days from the date of entry of these

Findings of Fact, Conclusions of Law and Order to specifically perform its obligations under the Stock Purchase Agreement.

6. If Defendant fails to specifically perform its obligations under the Stock Purchase Agreement within thirty (30) days, the Court shall enter judgment in favor of Plaintiffs and against Defendant for \$8.5 million.

ORDER

Accordingly, **IT IS HEREBY ORDERED:**

1. Plaintiffs shall immediately provide, both by e-mail and by overnight courier, to Greenberg Investment, LLC, in care of Martin Greenberg, a copy of this Order, together with wire transfer instructions for the \$8.5 million initial payment;
2. Greenberg Investment, LLC, shall likewise provide a draft of the irrevocable standby letter of credit for \$6.5 million with the issuing bank readily identifiable. Greenberg Investment, LLC, shall e-mail this irrevocable standby letter of credit to Gary Bjelland at g Bjelland@jsbw.com no later than twenty-five (25) days from the date of this Order;
3. If Bjelland approves the letter, the executed original of that irrevocable standby letter of credit shall be sent by Defendant to Bjelland, by overnight courier, on or before the same date that Defendant wires the \$8.5 million payment as Plaintiffs shall direct;
4. If Greenberg Investment specifically performs the Stock Purchase Agreement as set forth immediately above, Plaintiff shall promptly thereafter move to

dismiss this case with prejudice;

5. If, upon a showing by declaration filed by Plaintiffs, Greenberg Investment fails to specifically perform its obligations under the Stock Purchase Agreement in the manner set forth above, the Court shall enter judgment in favor of Plaintiffs and against Defendant for \$8.5 million.

DATED this 1st day of February, 2021.



Brian Morris, Chief District Judge
United States District Court